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No. 85-1708

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF CALIFORNIA, *et al.*,
Appellants

v.

CABAZON BAND OF MISSION INDIANS, *et al.*,
Appellees

On Appeal from the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE ONEIDA INDIAN NATION OF NEW YORK AS AMICUS CURIAE IN SUPPORT OF THE CABAZON AND MORONGO BANDS OF MISSION INDIANS OF CALIFORNIA

WILLIAM W. TAYLOR III *
CHRISTINE NICHOLSON
ZUCKERMAN, SPAEDER,
GOLDSTEIN, TAYLOR & KOLKER
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 778-1800
Attorneys for Amicus Curiae Oneida Indian Nation of New York

* Counsel of Record

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INTEREST OF AMICUS CURIAE

The Oneida Indian Nation of New York has a significant interest in affirmance of the holding of the Ninth Circuit Court of Appeals that state and local gambling laws do not apply on Indian reservations. Application to the Oneida Nation of the gambling laws of the State of New York, which essentially permit only small stakes games of chance by licensed religious, charitable or non-profit organizations, would be contrary to the freedom from federal and state governments which the Nation historically has enjoyed. Moreover, prohibition of gambling on the Oneida territory would be fatal to the Nation's recently revitalized economy. The Oneida's bingo games, which are managed and operated totally by members of the Oneida Nation, are virtually the sole

source of revenue and employment on the territory and allow the traditional Oneida people complete independence from federal, state, and local financial assistance.

The Oneida Indian Nation is a sovereign nation which has as its principal home the Oneida Indian Territory, located in Madison County, New York. It is a member nation of the Houdenosaunee or Six Nation Iroquois Confederacy.[1] The sovereignty of the Oneida Nation and the other nations of the Confederacy is recognized and guaranteed against interference by the Treaty of Fort Stanwix of 1784 (7 Stat. 15) and the Treaty of Canandaigua of 1794 (7 Stat. 44).

The Oneida Nation has a special interest in this case because the Nation is subject to federal statutes that are similar in content to Public Law 280, the scope of which is at issue here. These statutes, 25 U.S.C. §§ 232 and 233, purport to grant general criminal jurisdiction and certain limited civil jurisdiction over Indians on reservations to the State of New York. Section 233 purports to confer upon the courts of New York jurisdiction in civil actions and proceedings between one or more Indians and any other person to the same extent as in other civil actions and proceedings as defined by the laws of New York, with some notable exceptions.[2] Like the civil

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[1] The other five constituent nations of the Confederacy are the Mohawk, Onondaga, Seneca, Tuscarora and Cayuga nations.

[2] Briefly stated, those exceptions are: (1) any recognized tribe could enact prior to September 13, 1952 its own tribal laws and customs which upon certification to the Secretary of Interior "shall govern in all civil cases involving reservation Indians when the subject matter of such tribal laws and customs is involved or at issue"; (2) Indians exercising hunting and fishing rights granted by agreement, treaty, or custom are not subject to state licensing requirements; (3) Indian lands are not subject to state or local taxation, nor can they be subject to execution on a state court judgment; (4) the statute shall not be construed as authority for alienation of Indian lands; and (5) the state courts do not have jurisdiction in civil actions involving Indian lands or land claims which relate to events prior to September 13, 1952. 25 U.S.C. § 233.

component of Public Law 280, Section 233 has been interpreted to mean that New York has jurisdiction only over private civil litigation involving reservation Indians in state courts.[3] Moreover, the civil jurisdiction conferred by Section 233 has been narrowly construed by the state courts of New York in favor of tribal sovereignty. *See, e.g., Bennett v. Fink Construction Co.*, 47 Misc.2d 283, 262 N.Y.S.2d 331 (Sup. Ct. 1965). It is not properly construed as authority for New York to apply its state and local gambling laws on the Oneida territory.

If this Court reverses the decision of the Court of Appeals, the State of New York might use this Court's decision as authority to invoke 25 U.S.C. §§ 233 and/or 232[4] to regulate or prohibit gambling on the Oneida Indian Territory.[5]

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[3] Throughout its legislative history, the bill is described as one "to confer jurisdiction on the courts of the State of New York with respect to civil actions between Indians or to which Indians are parties." Senate Report No. 1836 (June 15, 1950), House Report No. 2720 (July 24, 1950), and Conference Report No. 3040 (August 31, 1950).

[4] 25 U.S.C. § 232, which purports to confer general criminal jurisdiction over Indians to the State of New York, should not be construed as authority for state regulation or prohibition of gambling on the Oneida territory because New York's gaming laws, like those of California, are essentially civil/regulatory rather than criminal/prohibitory in nature, under the analysis of *Seminole Tribe of Florida v. Butterworth*, 491 F.Supp. 1015 (S.D. Fla. 1980), *affirmed*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020, 102 S.Ct. 1717 (1982), *Oneida Tribe of Indians v. Wisconsin*, 518 F.Supp. 712 (W.D. Wisc. 1981), and *Barona Group of Capitan Grande Band of Mission Indians v. Duffy*, 694 F.2d 1185 (9th Cir. 1982), *cert. denied*, 461 U.S. 929, 103 S.Ct. 2091 (1983). Games of chance including bingo are not generally prohibited by New York as contrary to public policy, but are specifically authorized, subject to certain restrictions, by the State's Constitution at Article 1 § 9, and statutes enacted pursuant thereto. In short, New York has chosen to regulate rather than to entirely prohibit bingo.

[5] The Nation notes that the States of Arizona, Nevada, and New Mexico in their brief as *amici curiae* in support of the State of

ARGUMENT

Application of New York's Gambling Laws to the Bingo Operation of the Oneida Nation Would Seriously Undermine the Nation's Interest in Self-Government by Depriving the Nation of Revenue Needed for Essential Governmental Services

Since October 1985, the Oneida Nation has conducted bingo games for profit at a bingo hall located on its territory. The games are managed and operated solely by members of the Oneida Nation. The bingo operation employs no non-Indian consultants or managers; nor does it have any non-Indian investors. No federal, state or local funds were used in its establishment.

The bingo operation has, since October 1985, reduced the unemployment rate for Oneidas residing on the territory from eigthy percent to less than five percent. It employs about ninety people, mostly Oneidas, and generates a weekly payroll of about $17,000. As such, it is one of the largest employers in Madison County, New York.

The considerable profits from bingo are virtually the sole source of income for the Nation.[6] The territory does not have any known natural resources which could generate revenues for the Nation. The net proceeds of the bingo games have been used only to operate the Nation's government and to provide to the Oneida people the kinds

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California argue that the Ninth Circuit's decision "should be held invalid as to P.L. 280 States as well as invalid and, even if not valid as to such States, inapplicable in non-Pub. L. 280 States." Brief at p. 10.

[6] The Nation's only other source of income is a small smoke shop operated in the bingo hall. Most of its customers are patrons of the bingo hall.

of services and programs normally provided by state and local governments. The Nation has, with its bingo profits, installed fire alarm systems in every home, erected a traffic signal, provided garbage disposal services twice a week, and resurfaced the territory's roads and driveways.

The money also has been used to provide badly needed human and social services to its members, including a recreation program for its children, a program to teach the native Oneida language, and the construction of a Nation Council House. One particularly impressive use of the bingo money has been to provide scholarships for ninety percent of those Oneidas attending college and trade school. The Nation can now proudly say that any enrolled Oneida, of any age, who wants to attend college or trade school can do so with Nation funds. In the future, the Nation intends to use its bingo proceeds to build a daycare center and an elementary school for its children, housing for its senior citizens, and a health care clinic for all its members, to provide health care insurance to all its employees, and to establish cooperative farming on the territory.

In short, the bingo project has revitalized the Oneida economy, dormant for more than a century, in less than one year. For years, the traditional Oneidas struggled to maintain their financial independence from federal, state, and local government. Now, because of bingo, they are able to be self-sufficient. In this regard, the Oneidas are a successful example of the current federal policy of encouraging tribal self-government and promoting Indian economic development.

In his Statement on Indian Policy, issued January 24, 1983, President Reagan said:

> It is important to the concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their

> self-government. Some tribes are already moving in this direction. This Administration pledges to assist tribes in strengthening their governments by removing the federal impediments to tribal self-government and tribal resource development . . . This Administration affirms the right of tribes to determine the best way to meet the needs of their members and to establish and run programs which best meet those needs.

Statement by the President: Indian Policy, The White House (January 24, 1983). The President's Statement acknowledged that "The economies of American Indian reservations are extremely depressed with unemployment rates among the highest in the country," and that "Past attempts to stimulate growth have been fragmented and largely ineffective." *Ibid.*

The Interior Department has sought to implement the President's policy by actively opposing any proposed federal legislation that "would subject Indian individuals, Indian organizations, and tribal governments to state laws with regard to licensing, regulation or prohibition of gambling on Indian reservations." Memorandum from Assistant Secretary of the Interior regarding Tribal Gambling Activities, issued March 2, 1983. As explained by this policy directive:

> Such a proposal is inconsistent with the President's Indian Policy Statement of January 24, 1983 . . . A number of tribes have begun to engage in bingo and similar gambling operations on their reservations for the very purposes enunciated in the President's Message. Given the often limited resources which tribes have for revenue-producing activities, it is believed that this kind of revenue-producing possibility should be protected and enhanced.

CONCLUSION

In summary, affirmance of the decision below is vital to maintenance of the sovereignty of the Oneida Nation as well as to the future of its fledgling economy. Application of the gambling laws of New York to the bingo operation of the Oneida Nation would be inconsistent with, and would seriously undermine, the sovereign status of the Nation recognized by treaty, the delicate balance of federal, state and Indian jurisdiction in New York State created by 25 U.S.C. § 233, and the policy of the Administration to foster self-government and economic growth by Indian tribes.

Respectfully submitted,

WILLIAM W. TAYLOR III *
CHRISTINE NICHOLSON
ZUCKERMAN, SPAEDER,
GOLDSTEIN, TAYLOR & KOLKER
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 778-1800
Attorneys for Amicus Curiae
Oneida Indian Nation
of New York

* Counsel of Record